

he is a flight risk or danger to the community without affording him the right to an individualized bond hearing to determine whether (“DHS”) has detained Petitioner since August of 2015 during his removal proceedings. Immigration and Customs Enforcement (“ICE”) of the Department of Homeland Security

## INTRODUCTION

The accompanying memorandum of law, including any attached exhibits herewith, detention by Respondents. The basis for this petition is set forth in greater detail below, and in petitions this Honorable Court for a writ of habeas corpus to remedy his continued unlawful Petitioner, by and through undersigned counsel, Robert C. Buckley, Esq., respectfully

## PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SEC. 2241

Petition for Writ of Habeas Corpus

### RESPONDENTS.

CHRISTOPHER SHANAHAN in his official capacity as New York Director for U.S. Immigration Customs and Enforcement, CHRISTOPHER DAVIES in his official capacity as warden of the Bergen County jail,

SOCRATES MARTE  
A#XXX-XXX-163,  
CIV. No. \_\_\_\_\_

PETITIONER,

FOR THE SOUTHERN DISTRICT OF NEW YORK  
IN THE UNITED STATES DISTRICT COURT

- only deprives the district court of habeas jurisdiction to review orders of removal, not 231 (May 11, 2005), Title I, Sec. 106(c), amending INA 242(a)(2)(A)(B)(C), and 242(g), foreclosed by the REAL ID ACT. The REAL ID ACT of 2005, Pub. L. 109-13, 119 Stat. 5. Further, the use of the Writ of Habeas Corpus to challenge detention by ICE is not and the All Writs Act, 28 U.S.C. Sec. 1651.
- States. This Court may grant relief pursuant to 28 U.S.C. Sec. 2441, 5 U.S.C. Sec. 702, States, and such custody is a violation of the Constitution, law, or treaties of the United 1331, as Petitioner is presently in custody under the color and authority of the United 9, cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. Sec. 104-208, 110 Stat. 1570. This court has jurisdiction under 28 USC Sec. 2241, art. I Sec. Immigration Reform and Immigrant Responsibility Act of 1996 ("IRIRA"), Pub. L. No. 4. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. Sec. 1101, et seq., as amended by the Illegal

## JURISDICTION

- Constitution.
- bond hearing violates his due process rights under the Fifth Amendment of the U.S. Sec. 236(c), 8 USC 1226(c), and he asserts that his detention without an individualized 3. Petitioner contends that he is not subject to the mandatory detention provisions of INA is thus under the control of Respondents and its agents.
- Bergen County facility to house immigration detainees, such as the Petitioner. Petitioner around September 3, 2015. Upon information and belief, ICE has contracted with the August 31, 2015 and was transferred to the Bergen County jail in Hackensack, NJ on or 2. Petitioner was originally detained at 201 Varick Street in New York, NY, on or around

under INA 236(c) is a violation of the Due Process clause of the U.S. Constitution, under adjudicate constitutional issues, and Petitioner's claim is that his mandatory detention 7. Additionally, such recourse would be futile because the BIA does not have jurisdiction to (S.D.N.Y. 2010).

BIA has already "predetermined" the issue. *Louisatre v. Muller*, 758 F.Supp.2d 229 required to exhaust administrative remedies in this case as doing so would be futile, as (2008) and his being taken into ICE custody in 2015. Consequently, Petitioner is not notwithstanding the seven (7) year gap between termination of his sentence for probation

Therefore, the BIA would rule that Petitioner is subject to mandatory detention, immediately upon their release from custody in connection with their underlying offense. mandatory detention provisions of Sec. 1226(e) do not require DHS to detain an alien Immigration Appeals ("BIA"), in *Matter of Rojas*, 23 I&N 117, 127 (2001), ruled that the Mulligan denying Petitioner's request for a bond hearing. Furthermore, the Board of Judge in New York, NY on September 14, 2015. See Exhibit "A." Order of Judge T. because his request for an individualized hearing was denied by an Immigration Law 6. Petitioner has exhausted his administrative remedies to the extent required by law whether he is a flight risk or a danger to his community.

his continued detention without the right to an individualized bond hearing to determine legality of executive detention."). Here, Petitioner is challenging the constitutionality of 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the venue for a habeas petition remains the district court); accord INS v. St. Cyr, 533 U.S. challenges to detention. *Hernandez v. Gonzalez*, 424 F.3d 42, 42 (1<sup>st</sup> Cir. 2005) (proper

the instant circumstances. *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002).

8. Venue is proper in this district pursuant to 28 U.S.C. Sec. 1391(e) because Petitioner was arrested by ICE in New York, NY, at his residence at 600 West 139<sup>th</sup> Street, was detained furthermore, the decision to deny Petition the right to an individualized bond hearing was issued by the immigration court located at 201 Varick Street, New York, NY.

9. Alternatively, venue is proper under 28 U.S.C. Sec. 1391(b) because a substantial part of the events giving rise to this claim occurred in this district at 201 Varick Street, New York, NY.

10. Christopher Shannaham, who is the New York Field Office Director for ICE, is responsible for the immediate custody of Petitioner who is currently incarcerated in the Bergen County Jail, Hackensack, New Jersey. He is therefore a proper party to this litigation.

Pursuant to *Braden v. 30<sup>th</sup> Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500 (1973), venue therefore lies in the United States District Court for the Southern District of New York as this is the judicial District in which Petitioner's immediate custodian for habeas corpus purposes is located. *Rauf v. Shannaham*, No. 11 Civ. 7755 (S.D.N.Y 11/04/2011)

(S.D.N.Y. is proper venue for immigration detainee in Bergen County Jail because ICE Director is responsible for immediate custody thereof and jail warden is merely an agent of ICE Director).

## VENUE

13. Respondent Christopher Davies is the Warden of the Bergen County Jail, located at 160 South River Street, in Hackensack, New Jersey. Respondent has contracted with ICE to house immigrants detainees at the Bergen County facility and this court has personal jurisdiction over Respondent because of its substantial contacts with New York.

(Personal jurisdiction of a federal court over a non-resident defendant is governed by the law of the state in which the court sits--subject, of course, to certain constitutional limitations of due process.) *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994); see also Fed.R.Civ.P. 4(e)(1) (permitting service of process pursuant to the applicable rules of the state in which a federal district court sits). And under New York law, personal jurisdiction lies over any non-resident who, in person or through an agent, "transacts any business within the state." N.Y. C.P.L.R. § 302(a)(1) (McKinney 1990).

Because Respondent is in an ongoing business relationship with ICE's Field Office cusody of Petitioner and is sued in his official capacity.

11. Petitioner is a native of Dominican Republic and a legal permanent resident ("LPR") of the United States. He entered the U.S. with LPR status in 1993. Although he has maintained a residence in Manhattan, New York since his arrival to the United States, he has been in ICE custody since August 31, 2015. He was originally detained at 201 Vortic Street, New York, NY on or about August 31, 2015 and was transferred on or around September 3, 2015 to the Bergen County Jail in Hackensack, NJ.
12. Respondent Christopher Shanahan is the Field Office Director of ICE in New York, NY, with offices located at 26 Federal Plaza, room 1105. ICE is the arm of DHS responsible for detaining and removing aliens under the immigration laws. Respondent has legal

## PARTIES

See Exhibit "A."

- Mulligan denied citing the mandatory detention statute (INA 236(c)) referenced above.
- hearing, the undersigned requested an individualized bond hearing, which Judge before Immigration Judge Thomas Mulligan at 201 Varick Street, New York. At that
17. On September 14, 2015, undersigned counsel represented the Petitioner at a hearing Hackensack, New Jersey, by Respondent Christopher Shanahan, or an agent thereof.
16. On about September 3, 2015, Petitioner was transferred to the Bergen County jail in dated 8/31/15).
- New York Penal Code Sec. 220.39 (attempt to sell cocaine). See Exhibit "C" (NTA substance violation). Those grounds were, in turn, based on Petitioner's 2003 plea to admission as an LPR); and 2) INA Sec. 237(a)(2)(B)(i) (conviction of a controlled removal: 1) INA Sec. 237(a)(2)(A)(iii) (commission of an aggravated felony after served a Notice to Appear ("NTA"). The NTA cited two grounds for Petitioner's into custody at 201 Varick Street, New York, NY. On August 31, 2015, Petitioner was
15. On about August 31, 2015, ICE officers took Petitioner from his New York City home, suspended for six (6) months. See Exhibit "B." (Certificate of Disposition).
- Plea, Petitioner was sentenced to five (5) years of probation and had his driver license 2003 to New York Penal Law Sec. 220.39 (attempted sale of cocaine). As a result of his
14. Petitioner is a legal permanent resident of the United States who pled guilty in January, the jurisdiction of this court.

## STATEMENT OF FACTS

Immigration detainees at its Bergen County facility, it has clearly made itself amenable to Director of Operations in the southern district of New York, whereby it houses

- before taking him into custody, the mandatory detention provisions of INA 236(c) simply because ICE waited roughly twelve (12) years after Petitioner's underlying offense courts in this circuit for constitutional concerns that are directly relevant to the case at face of a straightforward reading of the statute and has been effectively overruled by detention regardless of when they were released from detention. But this view flies in the 22. BIA's view in *Matter of Rojas, supra*, is that 1226(c) subjects an alien to mandatory interpretation. Decisions by the overwhelming majority of courts in this circuit support this – not from any offense – and in close temporal proximity to that release from custody. "released" applies to aliens who are released from incarceration on the underlying offense context, and structure of the statute makes clear that the clause "when the alien is 21. As more fully explained in the accompanying memorandum of law, the plain text, the alien may be arrested or imprisoned again for the same offense. whether on parole, supervised release, or probation, and without regard to whether when an alien is released, without regard to whether the alien is released section 212(a)(2) [8 U.S.C. 1182(a)(2)] . . .". (A) is admissible by reason of having committed any offense covered in (1) Custody. The Attorney General shall take into custody and alien who – 20. Section 1226(c) provides in pertinent part: allegations.
19. Petitioner realleges and incorporates by reference all preceding paragraphs and his right to an individualized bond hearing to determine his eligibility for bail.
18. Petitioner brings the instant set of claims for relief based on the government's denial of

## FIRST CLAIM FOR STATUTORY RELIEF

a poor bail risk.”). However, the government’s invocation of INA 236(c), U.S.C., required to post bond except on finding that he is a threat to national security, or that he is required to post bond because he is a threat to national security, or that he is illegal, Dec. 666 (B.I.A. 1976) (“An alien generally is and should not be detained or petitioner on bond, were he to consider the equities in the case. See *Matter of Patel*, 151 community. For these reasons, Immigration Judge T. Mulligan would likely release the deprivation of that interest is also high, as he is neither a flight risk nor a danger to his 27. In this case, petitioner’s interest is profound – his physical liberty. The risk of erroneous the risk of erroneous deprivation of the interest; and (3) the government’s interest.

61 (9<sup>th</sup> Cir. 2004). The test considers three factors: (1) the affected private interest; (2) process liberty interests are at stake. See *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1160- *Eldridge*, 424 U.S. 319 (1976). Courts employ the *Eldridge* test when an alien’s due clause of the Fifth or Fourteenth Amendment to the U.S. Constitution.” *Matthews v.* individuals of “liberty” or “property” interests within the meaning of the Due Process 26. “Procedural due process imposes constraints on governmental decisions which deprive continued detention without an individualized hearing is violation of his procedural due process rights.

25. As more fully explained in the accompanying memorandum of law, petitioner’s allegations.

24. Petitioner alleges and incorporates by reference all preceding paragraphs and hearing is a violation of his due process rights under the U.S. Constitution.

## PROCEDURAL DUE PROCESS SECOND CLAIM FOR RELIEF

do not apply to him – and his detention under that provision without the right to a bond hearing is a violation of his due process rights under the U.S. Constitution.

- electronic supervision.
- an order releasing the Petitioner from ICE custody and placing him under
- e. Grant any further relief that this Honorable Court deems just and appropriate, including Respondent's custody;
- Court during the pendency of this proceeding and while Petitioner remains in
- d. Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this Court, forthwith;
- individualized bond hearing by an immigration judge pursuant to 8 U.S.C. 1226(a),
- c. Grant Petitioner a Writ of Habeas Corpus and order that Petitioner receive an custody on his own recognition;
- b. Grant Petitioner a Writ of Habeas Corpus and order that he be immediately released from
- a. Assume jurisdiction over this matter;

forthwith:

**WHEREFORE**, Petitioner Socrates Marie prays that this Court grant the following relief

### **PRAYER FOR RELIEF**

due process rights.

bond hearing is not authorized under 1226(c) and constitutes a violation of his procedural

29. For all the foregoing reasons, Petitioner's continued detention without an individualized

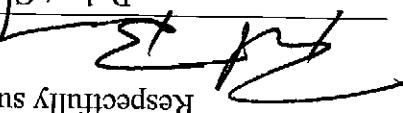
government.

28. As the *Eldridge* test shows, Petitioner's interests here far outweigh those of the

continued detention without an individualized bond hearing is minimal.

1226(c), forecloses that inquiry. Therefore, the government's interest in Petitioner's

*Attorneys for Petitioner Socrates Marte*  
Law Office of Robert C. Buckley, Esq.  
Robert C. Buckley  
55 Broadway, 23rd Floor  
New York, NY 10006  
Tel. (646) 284-5032

Respectfully submitted,  


Dated: Queens, New York  
September 16, 2015

New York, declares, under the penalties of perjury, that the foregoing is true and correct.  
Robert C. Buckley, Esq., an attorney duly admitted to practice law in the Southern District of

**EXHIBIT A**

SX

THOMAS J. MULGAN  
Immigration Judge

Date: 9/19/15

NEW YORK - NEW YORK SERVICE PROCESSING CENTER (VATICAN ST)

APPEAL: waived -- reserved  
COPY of this decision has been served on the respondent and the  
Department of Homeland Security.

OTHER

released from custody under bond of \$ .

released from custody on his own recognizance

ORDERED that the request be granted and that respondent be:

~~denied~~  
ORDERED that the request for a change in custody status be denied  
Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

WITH RESPECT TO CUSTODY  
ORDER OF THE IMMIGRATION JUDGE

IN REMOVAL PROCEEDINGS

RESPONDENT

MARTE ARITAS, SOCRATES EDILFONSO

IN THE MATTER OF:

FILE: A044-263-163

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
NEW YORK, NY

## **EXHIBIT B**

COURT CLERK



IN WITNESS WHEREOF, I HAVE HEREBY SET MY HAND AND AFFIXED MY  
OFFICIAL SEAL ON THIS DATE 09/11/2015.

SURCHARGE = \$210 (PAID)

ATTEMPTED CRIMINAL SALE OF A CONTROLLED SUBSTANCE 3rd DEGREE  
PL 110-220.39 00 CP (DANGEROUS DRUG)  
LICENCE SUSPENDED = 6 MONTH(S)  
PROBATION = 5 YEAR(S)

TO  
CATALDO, J, THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT  
THAT ON 02/20/2003, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE  
ATTEMPTED CRIMINAL SALE OF A CONTROLLED SUBSTANCE 3rd DEGREE  
PL 110-220.39 00 CP (DANGEROUS DRUG)  
CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE CATALDO, J THEN A  
JUDGE OF THIS COURT.  
ON FILE IN THIS OFFICE THAT ON 01/09/2003 THE ABOVE NAMED DEFENDANT WAS  
I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS  
ON FILE IN THIS OFFICE THAT ON 01/09/2003 THE ABOVE NAMED DEFENDANT WAS  
CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE CATALDO, J THEN A  
JUDGE OF THIS COURT.

DEFENDANT

MARTE, SOCRATES  
DATE, FILED: 12/19/2002  
DATE OF BIRTH: 11/17/1979  
ARREST #: M02605580  
DATE OF ARREST: 10/27/2002  
LOWER COURT NUMBER(S): 2002NY075697  
CASE NUMBER: 08056N-2002  
CERTIFICATE OF DISPOSITION NUMBER: 52007  
PEOPLE OF THE STATE OF NEW YORK  
VS.  
DATE: 09/11/2015  
CERTIFICATE OF DISPOSITION INDICIMENT  
SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY  
100 CENTRE STREET  
NEW YORK, NY 10013  
FEE:\$10.00

# **EXHIBIT C**

\*NOTE: PER TELEPHONIC CONVERSATION - COPY OF NTA IS ATTACHED\*

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [\*] Other  
DATE: 9/4/15 BY: COURT STAFF ah V3  
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [m] ALIEN's ATT/REP [p] DHS  
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

CERTIFICATE OF SERVICE  
consulst the Immigratlon Court Practice Manual, available at www.usdoj.gov/eoix.  
or 240-314-1500. For information on Immigration Court procedures, please  
information regarding the status of your case, call toll free 1-800-898-7180  
A list of free legal service providers has been given to you. For  
SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.  
SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED  
OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE  
ADDRESSES AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE  
EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST Inform THE  
TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS.  
COURT NEW YORK, NY THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR  
CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION  
Court WHERE YOU ARE SCHDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO  
OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR  
COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE  
ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM  
THE COURT WHERE YOU ARE SCHDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO  
OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR  
ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE  
EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST Inform THE  
TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS.  
IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT  
been provided that's notice and b) You are removable.  
clear, unequivocal and convincing evidence that a) Your attorney has  
againts You if the Immigration and Nationality Act. An order of removal will be entered  
of the Immigration and Nationality Act. An order of removal under section 240(b) (5)  
custody by the Department of Homeland Security and held for further  
may result in one or more of the following actions: (1) You may be taken into  
custody by the Department of Homeland Security and held for further  
earlier hearing in writing.  
must appear with you at the hearing prepared to proceed. Your attorney or representative  
representative. If you wish to be represented, your attorney or representative  
Appears in order to permit you the opportunity to obtain an attorney or  
been scheduled earlier than 10 days from the date of service of the Notice to  
to represent persons before an Immigration Court. Your hearing date has not  
Government, by an attorney individual who is authorized and qualified  
You may be represented in these proceedings, at no expense to the  
earlier hearing in writing.

201 VARICK ST., RM 1140  
NEW YORK, NY 10014

Please take notice that the above captioned case has been scheduled for a  
MASTER hearing before the Immigration Court on Sep 14, 2015 at 1:00 P.M. at:

EAST ELMHURST, NY 11369

.

22-57 99TH STREET

BUCKLEY, Robert CORNELIUS

TO: LAW OFFICE OF ROBERT C. BUCKLEY, ESO.

DATE: Sep 4, 2015

FILE: A044-263-163

RE: MARTE ARIAS, SOCRATES EDILFONSO

201 VARICK ST., RM 1140

IMMIGRATION COURT

NOTICE OF HEARING IN REMOVAL PROCEEDINGS

No Hearings Scheduled  
No Judge Assigned

**RESPONDENT'S MOTION FOR BOND HEARING**

RESPONDENT

SOCRATES MARTE  
A#044263163

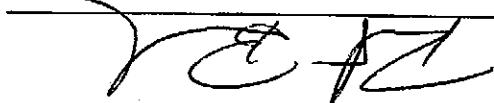
IN THE MATTER OF:

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
201 Varick Street, Room 1140  
New York, NY 10014

U.S. DEPARTMENT OF JUSTICE  
NEW YORK, NY  
201 VARICK STREET  
EMIGRATION COURT  
E.O.L.R.

**ROBERT C. BUCKLEY, ESO.** 22-57 99<sup>TH</sup> STREET  
**ATTORNEY OF JUSTICE** 15 SEP -4 PM 2:39  
**\*\*DETAINED\*\*** East Elmhurst, NY 11369

Attorney for Respondent Socrates Marte  
(646) 284-5032  
East Elmhurst, NY 11369  
22-57 99<sup>th</sup> Street  
EOIR #NJ719113  
Robert C. Buckley

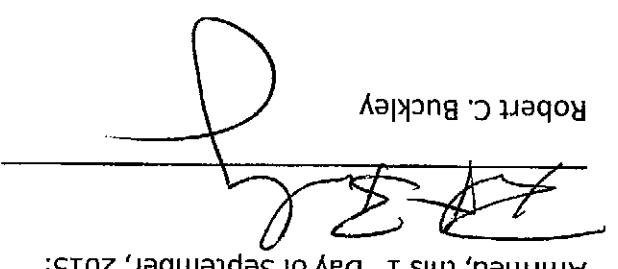
  
RESPECTFULLY submitted this 1<sup>st</sup> day of September 2015.  
  
Respectfully requested that a bond hearing be set as soon as possible so that he can be provided an opportunity to demonstrate why he should be released on his own recognizance, or at the lowest possible bond. It is also requested that the hearing not be scheduled on Thursday, September 3, 2015, as undersigned counsel has a prior commitment in another court.

Immigration Enforcement in Bergen County jail.  
Responsible SOCRATES MARTE, through undersigned counsel, requests that a bond hearing be set as soon as possible. Respondent is currently detained by U.S. Customs and

## MOTION FOR BOND HEARING

IN THE MATTER OF : )  
SOCRATES MARTE )  
A#044263163 )  
IN REMOVAL PROCEEDINGS )  
RESPONDENT )

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
201 Varick Street, Room 1140  
New York, NY 10014



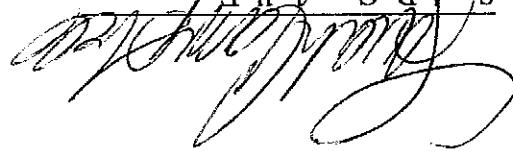
Robert C. Buckley

Affirmed, this 1<sup>st</sup> Day of September, 2015:

I, ROBERT C. BUCKLEY, mailed or delivered a copy of this MOTION FOR BOND HEARING on September 1, 2015 to the DHS (U.S. Immigration and Customs Enforcement) at 201 Varick Street, room 1130, New York, NY 10014.

**CERTIFICATE OF SERVICE**

DHS/Litigation  
Assistant Chief Counsel  
Sarah B. Campbell, Esq.



[X] personal service.

[ ] facsimile transmission at the following telephone number:  
[ ] first class mail at the following address:

copy of the foregoing document upon the respondent by:

I HEREBY CERTIFY that on September 2, 2015, I caused to be served a true

Certificate of Service

DHS/TCE/Litigation  
Assistant Chief Counsel  
Sarah B. Campbell, Esq.

  
Sincerely,

You are hereby advised that the Notice to Appear served upon you on or about August 31, 2015 will be filed with the Immigration Court at Room 1140, 201 Varick Street, New York, NY 10014. You will receive notice of the date, time and place of any hearing scheduled in your removal proceedings by this Court. Any inquiries or correspondence concerning your removal proceedings should be directed to the hearing held in your removal proceedings by this Court. Any inquiries or must report any changes of your address or telephone number in writing directly to them on the attached Form EOIR-33.

Hackensack, NJ 07601  
160 South River St.  
c/o Bergen County Jail  
Address:

File No.: A044 263 163

Name: MARTE ARIAS, Socrates Edilfonso

NEW YORK, NEW YORK 10014  
201 VARICK STREET, ROOM 1130  
OFFICE OF THE CHIEF COUNSEL  
BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT  
U.S. DEPARTMENT OF HOMELAND SECURITY

MAIL DATE 8/29/2015  
U.S. DEPARTMENT OF HOMELAND SECURITY  
BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT  
OFFICE OF THE CHIEF COUNSEL  
201 VARICK STREET, ROOM 1130  
NEW YORK, NEW YORK 10014  
c/o Bergen County Jail  
160 South River St.  
Hackensack, NJ 07601  
File No.: A044 263 163  
Name: MARTE ARIAS, Socrates Edilfonso  
Address:  
c/o Bergen County Jail  
160 South River St.  
Hackensack, NJ 07601  
Sincerely,  
Sarah B. Campbel, Esq.  
Assistant Chief Counsel  
DHS/TCE/Litigation

I hereby certify that the respondent was provided an EOIR-33 Form and notified that they must inform the Immigration Court of any further change of address.

Upon release from ICE custody, the respondent reported his/her address and telephone number would be:

- Released from ICE custody on the following condition(s): \_\_\_\_\_

Order of Supervision or Own Recognition (Form I-220A)

Bond in the amount of Enter Dollar Amount of Respondent's Bond \_\_\_\_\_

Removed, Deported, or Excluded \_\_\_\_\_

Other \_\_\_\_\_

- Detained by ICE and transferred on

Hackensack, NJ 07601

160 South River Street

Bergen County Jail

August 31, 2015 at:

- 4

This/her anticipated release date is:

This is to notify you that this respondent is currently incarcerated by federal, state or local authorities. He/she is incarcerated at \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Respondente: MARIE ARRAS, SOCRALES BULLHORNOS

A Number: 044263163

Responsible: MARTE ARTAS, SOCRALES EDIFICIOS

New York, NY 10014

201 Vatick St

From: ICE ERO

New York, NY 10014

201 Varick St.

To: Office of t

To: Office of the Immigration Judge, EOIR

Date: September 1, 2015

#### **2.2.2. Implications of International Security**

Notice to EULR: Alien Address

NOTICE OF CUSTODY DETERMINATION	
DEPARTMENT OF HOMELAND SECURITY	
Alien's Name: MARTE ARRIAS, Socates E-mail/Phone: A-File Number: 044 263 163	Subject ID: 353667633
Date: 08/31/2015	Event ID: NYCL508000657
<p>Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be detained by the Department of Homeland Security.</p> <p><input checked="" type="checkbox"/> Under bond in the amount of \$ _____</p> <p><input type="checkbox"/> Released (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Under other conditions. [Additional document(s) will be provided.]</li> <li><input type="checkbox"/> On your own recognizance.</li> <li><input type="checkbox"/> Under other conditions. [Additional document(s) will be provided.]</li> </ul> <p><input type="checkbox"/> Date and Time of Custody Determination August 31, 2015 11:30 am</p> <p><input type="checkbox"/> Name and Signature of Authorized Officer A. Martinez (NYC22-39201-SAC)</p> <p><input type="checkbox"/> Office Location/Address New York, NY</p> <p><input type="checkbox"/> Supervisor/Detention Deportation Officer Title Date 08/31/2015</p> <p><input type="checkbox"/> Signature of Alien Title Name or Number of Interpreter (if applicable) N/A</p> <p>The contents of this notice were read to MARTE ARRIAS, Socates E in the English language. (Name of Alien) (Name of Language) (Name of Language)</p>	

You may request a review of this custody determination by an immigration judge.

I acknowledge receipt of this notification, and

I do request an immigration judge review of this custody determination.

I do not request an immigration judge review of this custody determination.

If you would like to request a bond hearing or *Joseph* hearing before an immigration judge, please check the appropriate box and sign the form enclosed. A hearing then will be scheduled to determine your custody status.

Enclosed please notice that U.S. Immigration and Customs Enforcement (ICE) has determined that you are being detained under either discretionary authority or mandatory authority based on the box checked for that specific authority. You then may request a particular hearing corresponding to that detention authority. In other words, you may request an individualized bond determination hearing if you are being held under INA § 236(a) (discretionary determination), likewise, you may request a custody determination, i.e., a *Matter of Joseph* (*Joseph*), 22 I&N. Dec. 799 (BIA 1999), hearing if you are being held under INA § 236(c) (mandatory determination).

On January 28, 2015, the U.S. District Court for the District of New Jersey held that the Notice of Custody Determination (DHS Form I-286 (1/14)) fails to provide aliens subject to detention with adequate notice of their detention status, i.e., whether the aliens are being detained under discretionary authority (Section 236(a)) or mandatory authority (INA § 236(c)), 8 U.S.C. § 1226(a)) or mandatory authority determination (INA § 236(c)), 8 U.S.C. § 1226(c)) grounds. As a result, the Court ruled that the U.S. Department of Homeland Security must inform all aliens detained in the State of New Jersey of the specific custody used to detain them and the type of custody determination hearing to which they are entitled. *Gayle v. Johnson*, --- F. Supp.3d ---, 2015 WL 351669, at \*10, \*25 (D.N.J. Jan. 28, 2015). This Addendum serves to inform you of the detention authority holding you and the type of hearing you may request.

This addendum to the Department of Homeland Security, Notice of Custody Determination (DHS Form I-286 (1/14)) is provided to inform you of the basis for your detention under the Federal immigration laws and your right to seek review of your custody determination.

On January 28, 2015, the U.S. District Court for the District of New Jersey held that the Notice of Custody Determination (DHS Form I-286 (1/14)) fails to provide aliens subject to detention with adequate notice of their detention status, i.e., whether the aliens are being detained under discretionary authority (Section 236(a)) or mandatory authority (INA § 236(c)), 8 U.S.C. § 1226(a)) or mandatory authority determination (INA § 236(c)), 8 U.S.C. § 1226(c)) grounds. As a result, the Court ruled that the U.S. Department of Homeland Security must inform all aliens detained in the State of New Jersey of the specific custody used to detain them and the type of custody determination hearing to which they are entitled. *Gayle v. Johnson*, --- F. Supp.3d ---, 2015 WL 351669 (D.N.J. Jan. 28, 2015).

## ADDENDUM TO NOTICE OF CUSTODY DETERMINATION

Name of Interpreter (if applicable): N/ATitle: SACName and Signature of Authorized Officer: (NLCOZ-JWS)

Date: \_\_\_\_\_

Signature of Alien: X 8-5-14 I decline to make an election at this time. No, I do not want a *Joseph* hearing to review this custody determination. Yes, I do want a *Joseph* hearing to review this custody determination. ICE has determined that you are subject to mandatory detention under INA § 236(c). I decline to make an election at this time. No, I do not want a bond hearing to review this custody determination. Yes, I do want a bond hearing to review this custody determination. ICE has determined that you are subject to discretionary detention under INA § 236(a).Alien Number: A# 44-363-163Name: MARTE Aluis, Socrafes

See reverse for important information

(City and State)

Date: August 31, 2015  
New York, NY

(Signature and Title of Issuing Officer)

Date: August 31, 2015

Charge(s) set forth above.

A 421A MORTGAGE JR SDO

(Time) *7/22/15*

(Date)

on To be set. at To be set. to shadow why you should not be removed from the United States based on the complete address of Immigration Court including Room Number, if any)

TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION COURT.  
YOU ARE ORDERED TO APPEAR BEFORE AN IMMIGRATION JUDGE OF THE UNITED STATES DEPARTMENT OF JUSTICE AT: Section 235(b)(1) order was vacated pursuant to:  8CFR 208.30(j)(2)  8CFR 235.3(b)(5)(iv) or torture.  This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution

DEPARTMENT OF JUSTICE  
IMMIGRATION COURT  
20 VARICK STREET  
E.O.R. NEW YORK, NY  
15 SEP -2 PM 3:17

See Continuation Page Made a Part Hereof

Position(s) of law:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following:

4. On or about February 20, 2003, You were convicted of the crime of criminal sale of a controlled substance in the third degree, to wit: COCAINE, in violation of Section 110/220, 39(1) of the New York State Penal Law pursuant to a judgment entered in the Supreme Court of the State of New York, County of New York under New York County Supreme Court Indictment No. 08056-2002.

3. You were admitted to the United States at JFK International Airport, Queens, New York on or about October 24, 1993 as a lawful permanent resident;

2. You are a native of DOMINICAN REPUBLIC and a citizen of DOMINICAN REPUBLIC;

1. You are not a citizen or national of the United States;

(Number, street, city and ZIP code) (Area code and phone number)

450 AUDUBON AVENUE NEW YORK, NEW YORK

(917) 569-7707

Residently residing at: SOCRATES EDITIONS MARKETINGIn the Matter of: J. M. G.

Subject ID: 353667633 FINS: 1121126046 Event No: NYC1508000657

File No: 044 263 163 DOB: 11/27/1979

Notice to Appear

U.S. Department of Homeland Security

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<p style="text-align: right;">(Signature of Respondent or Personality Serviced)</p> <p><b>A 6076 RIVERA</b></p> <p>The alien was provided oral notice in the <b>BNGLISH</b> language at the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.</p> <p>Attached is a list of organizations and attorney's which provide free legal services.</p> <p><input checked="" type="checkbox"/> Attached is a credible fear worksheet.</p> <p><input type="checkbox"/> Attached is a list of organizations and attorney's which provide free legal services.</p> <p><input checked="" type="checkbox"/> In person      <input type="checkbox"/> by certified mail, returned receipt requested</p> <p><input type="checkbox"/> By regular mail</p>	
<p>This Notice To Apper was served on the respondent by me on <b>August 31, 2015</b>, in the following manner and in compliance with section 239(a)(1) of the Act.</p> <p><b>Certificate of Service</b></p>	

(Signature and Title of Immigration Officer)

Date:

(Signature of Respondent)

Before:

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

**Request for Prompt Hearing**

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.dhs.gov/aboutheady/guide.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the order pending appeal to the United States Court of Appeals for the Circuit in which you are located or to the United States Court of Appeals for the District of Columbia Circuit. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the order pending appeal to the United States Court of Appeals for the Circuit in which you are located or to the United States Court of Appeals for the District of Columbia Circuit. You must notify the DHS office to appear if you fail to do so.

Immigration Court Duties: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration Judge in your absence, and you may be arrested and detained by the DHS.

Immigration Court Duties: You are given the opportunity to make any such application to the Immigration Judge.

Privilege of Departure Voluntarily: You will be given a reasonable opportunity to make any such application to the Immigration Judge.

Right to Appeal: You will be advised by the Immigration Judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given the opportunity to make any such application to the Immigration Judge.

Right to Appeal: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration Judge, you have a right to appeal an adverse decision by the Immigration Judge.

Conduct of the Hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Proceedings: You are required to carry it with you at all times.

Alien Registration: This copy of the Notice to Apper served upon you is evidence of your alien registration while you are under removal proceedings. Any statement you make may be used against you in removal proceedings.

**Notice to Respondent**